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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,845	06/15/2001	Doug Grumann	10002695-1	8777

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EXAMINER	
TRUONG, LECHI	
ART UNIT	PAPER NUMBER
2194	

NOTIFICATION DATE	DELIVERY MODE
12/24/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	09/882,845	GRUMANN, DOUG	
	Examiner	Art Unit	
	LECHI TRUONG	2194	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09/26/08*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date. _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-26 are presented for examination.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-13 directed to the method claims that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to quality as a 101 statutory process, the claim should be positively reciting the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps. Appropriate correction is required to add the computer performs the steps of the methods.

3. Claims 24-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to apparatus claims, but appearing to be comprised of software alone without claiming associated computer hardware required for execution. For example, claim 6 defines "apparatus" in the preamble and the body of the claim recites "means for deriving", "means for generating", "and means for adjusting". Deriving, generating and adjusting are performed by software modules. Therefore, claim 24 is non-statutory because it recites a claim that comprises software per se embodiments.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims **1-3, 5-15, 17-26** are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al (US. Patent 6,059,842) in view of Clare et al (US. Patent 6,432985 B1) and further in view of Miller (US 5446653 A).

As to claim 1, Dumarot teaches the invention substantially as claimed including: electronically deriving relationships (the optimizer contains rules 330, 341, 351 that it uses to makes such optimizations 330, 340 and recommendations 350. For example, If A1=yes, and S1 =200 MHz, or Mi=90%, then make suggestion and change the graphic card settings that control "synchronization on vertical refresh", col 7, ln 25-35/ comparing actual system/ application setting with recommend setting, col 7, ln 5-16), over time (changes to system and application configurations at different points in time, in evaluating the effects of changing application setting and in comparing actual system/application settings with recommended setting, col 7, ln 10-16/ at specific increments of time, col 5, ln 10-17), monitored variable/ performance (dynamically

monitoring system behavior an performance, col 3, ln 16-22/ the optimizer 136 monitors system 12 behavior/ col 5, ln 47-55/ optimizer 136 gathers relevant system information/ relevant application information, col 5, ln 30-46), generating a number of rules based on said derived relationship(the optimizer contains rules 330, 341, 351 that it uses to makes such optimizations 330, 340 and recommendations 350. For example, If A1=yes, and S1 =200 MHz, or Mi=90%, then make suggestion and change the graphic card settings that control "synchronization on vertical refresh", col 7, ln 25-35/ if A and B are true and C is false then make suggestion and take action, col 7, ln 30-35 /a rule may be: if A1= yes, S1=200 MHz or M1 = 90%, the rules is if A and B are true then C is false, col 7, ln 27-30/ ln 33-36), adjusting at least one of said system variable based on said generated number of rules (If A1 = yes, and S1 = 200MHz, or M1 = 90%, then make the suggestion and change the graphic car settings, col 7, ln 25-30/ parameter A1 may control the graphical quality of an engineering application's 3 D graphics. Lower graphical quality often implies farter use of an application. System setting 440(Fig. 4) contain information usually relating to static qualities of the computer system such the particular operating system, amount of memory, processor speed, graphics card name, and bios version, col 4, ln53-67 to col 5, ln 1-4), to enhance the performance (col 3, ln 10-25).

Dumarot does not teach automatically generating rules without requiring human interaction, deriving relationship over time. However, Clare teaches deriving relationship over time (a numerical relationship between change in torque factor and change in temperature (G) for the voice coil motor, combined with the torque factor adjustment and temperature at/near the voice coil motor measured at a first time (for example during the initial start-up of the disk drive during the automatic recalibrations that is performed during a start-up)[over time],

AF.sub.RECAL and T.sub.RECAL respectively, to determine an adjustment factor (AF.sub.EVENT) that is used to adjust the most recent K.sub.T curve for temperature changes during operation, co, 2, ln 59-66/ this relationship between the voice coil motor K.sub.T curve and temperature change (G), and combines it with temperature data taken at various times [over timer]to compensate the K.sub.T used in seek algorithms to increase seek performance and reliability without having to perform a recalibration of the disk drive 100, col 5, ln 53-56/ since Chare does not teach determine relationship with human interaction, this relationship is automatically generated without requiring the human interaction).

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching of Dumarot with Clare to incorporate the features of automatically generating rules without requiring human interaction, deriving relationship over time because this increases seek performance and reduces the overall performance of the disk dive.

Dumarot and Clare do not teach automatically generating a rules. However, Miller teaches automatically generating a rules(automatically generating documents, and more particularly to a rule based system that assembles documents based on rule sets assigned to clauses of text, col 1, ln 10-15).

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching of Dumarot and Clare with Miller to incorporate the features of automatically generating rules without requiring human interaction because this provides a powerful rule based document generation system.

As to claim 2, Dumarot teaches at least in part on a performance goal (optimizing software, col 3, ln 10-45/ optimizing system performance, col 4, ln 56-67/col 5, ln 1-25/ col 6, ln 7-55/ col 7, ln 1-67/ col 8, ln 8-57).

As to claim 3, Dumarot teaches part on current values of said system variable (a set of control parameters A1, A2, col 4, ln 56-67/col 5, ln 1-25/ col 7, ln 1-67/ color 570, col 8, ln 7-60), recommend (recommendation 350, col 7, ln 1-67).

As to claim 5, Dumarot teaches acquired data (values M1, M2.. is obtained, col 5, ln 1-25).

As to claim 6, Dumarot teaches data over time (specific increments of time, col 5, ln 1-25), gathering said data (the information gathered, col 7, ln 1-67), logging/ logged data (threshold distance/ (X1, X2), col 9, ln 1-40), relationship (X1, Y1, col 9, ln 1-40).

As to claim 7, Dumarot teaches discrete points in time (different points in time, col 7, ln 1-67).

As to claim 8, Dumarot teaches an event (system behavior, col 5, ln 1-25).

As to claim 9, Dumarot teaches performance of metric data (performance, col 5, ln 1-25).

As to claim 10, Dumarot teaches identifying a number of applications (a particular unique identifier 410 for a software application, col 4, ln 56-67/ col 5, ln 1-25).

As to claim 11, Dumarot teaches variable (parameter, A1, A2.., col 4, ln 56-67) , the performance of said computer (increasing the apparent speed of computer, col 3, ln 9-15).

As to claim 12, it is an apparatus claim of claim 1; therefore, it is rejected for the same reason as claim 1 above.

As to claim 13, Dumarot teaches performance metrics (performance, col 5, ln 1-25).

As to claim 14, it is an apparatus claim of claim 1; therefore, it is rejected for the same reason as claim 1 above.

As to claim 15, Dumarot teaches performance goal (performance, col 5, ln 1-25).

As to claim 17, it is an apparatus claim of claim 5; therefore, it is rejected for the same reason as claim 5 above.

As to claim 18, Dumarot teaches a configuration file (amount of memory, col 5, ln 1-25).

As to claim 19, Dumarot teaches monitoring (monitor program 137, col 5, ln 1-67).

As to claims 20-26, they are apparatus claims of claims 9-10, 1, 5, 6; therefore, they are rejected for the same reasons as claims 9-10, 1, 5, and 6 above.

5. Claims **4, 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al (US. Patent 6,059,842) of Clare et al (US. Patent 6,432985 B1), as applied to claim 1 above, and in view of Mihata (design rule verifying system) and further in view of Miller(US 5446653 A).

As to claim 4, Dumarot , Clare and Miller do not teach iterative. However, Mihata teaches iterative (the contradictory design rule are repeated, page 1).

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching of Dumarot, Clare, Miller and Mihata because Mihata's iterative would improves the efficiency of Dumarot and Clare's systems by allowing the system to repeat the prior step of the correcting work.

As to claim 16, it is an apparatus claim of claim 4; therefore, it is rejected for the same reason as claim 4 above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LeChi Truong whose telephone number is (571) 272-3767. The examiner can normally be reached on 8 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR of Public PAIP. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIP system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

/LeChi Truong/

Examiner, Art Unit 2194